In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 343

BARBARA KARRELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (V R. 682-691) is reported at 181 F. 2d 981.

JURISDICTION

The judgment of the Court of Appeals was entered on April 24, 1950 (V R. 692), and a petition for rehearing was denied on September 8, 1950 (V R. 693). The petition for a writ of certiorari was filed on October 4, 1950. The jurisdiction of this Court is invoked under 28 U.S.C.

1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the criminal sanctions of Section 1500 of the Servicemen's Readjustment Act of 1944 and Section 15 of the Act of March 20, 1933, c. 3, 48 Stat. 8, 11, apply to one who knowingly causes a false certificate to be made concerning a claim for benefits under the 1944 Act.

2. Whether petitioner can validly be required, as a condition of probation, to make restitution to each of the veterans named in the counts on which she was convicted in an amount equal to the difference between the actual purchase price of the property involved and the appraised value of such property.

3. Whether the evidence is sufficient to support petitioner's conviction.

STATUTES INVOLVED

The pertinent provisions of the Servicemen's Readjustment Act of June 22, 1944, c. 268, 58 Stat. 284, 291, as amended by the Act of December 28, 1945, c. 586, 59 Stat. 623, 626, are as follows:

> Sec. 500. [38 U.S.C. 694(a)] (a) Any person who shall have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war and who shall have been discharged or released therefrom under conditions other than

dishonorable after active service of ninety days or more, or by reason of an injury or disability incurred in service in line of duty, shall be eligible for the benefits of this title. Any loan made by such veteran within ten years after the termination of the war for any of the purposes, and in compliance with the provisions, specified in this title, is automatically guaranteed by the Government by this title in an amount not exceeding fifty per centum of the loan: *Provided,* That the aggregate amount guaranteed shall not exceed $2,000 in the case of non-real-estate loans, nor $4,000 in the case of real-estate loans; or a prorated portion thereof on loans of both types or combination thereof.

* * * * *

Sec. 501. [38 U.S.C. 694a] Any loan made to a veteran under this title, the proceeds of which are to be used for purchasing residential property or constructing a dwelling to be occupied as his home or for the purpose of making repairs, alterations, or improvements in property owned by him and occupied as his home, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) That the proceeds of such loan will be used for payment of the property purchased or constructed or improved;

* * * * *

(3) That the price paid or to be paid by the veteran for such property or for the

cost of construction, repairs, or alterations does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator.

* * * * *

Sec. 1500. [38 U.S.C. 697] Except as otherwise provided in this Act, the administrative, definitive, and penal provisions under Public, Numbered 2, Seventy-third Congress, as amended, and the provisions of Public, Numbered 262, Seventy-fourth Congress, as amended (38 U.S.C. 450, 451, 454a and 556a), shall be for application under this Act. For the purpose of carrying out any of the provisions of Public, Numbered 2, as amended, and this Act, the Administrator shall have authority to accept uncompensated services, and to enter into contracts or agreements with private or public agencies, or persons, for necessary services, including personal services, as he may deem practicable.

Public Law No. 2, 73d Cong., 1st sess., referred to in Sec. 1500 of the Servicemen's Readjustment Act of 1944, is the Act of March 20, 1933, c. 3, 48 Stat. 8, 11, hereinafter referred to as the 1933 Act, Sec. 15 of which (38 U.S.C. 715) provides:

> Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing pur-

porting to be such, concerning any claim for benefits under this title, shall forfeit all rights, claims, and benefits under this title, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

18 U.S.C. 3651 provides in pertinent part:

Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, any court having jurisdiction to try offenses against the United States, except in the District of Columbia, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. * * *

* * * * *

While on probation and among the conditions thereof, the defendant—

May be required to pay a fine in one or several sums; and

May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; * * *

* * * * *

STATEMENT

On October 27, 1948, in the District Court for the Southern District of California, petitioner was indicted in 17 counts for knowingly causing false certificates to be made concerning veterans' claims for benefits under the Servicemen's Readjustment Act of 1944, in violation of Section 1500 of that Act (38 U.S.C. 697) and Section 15 of the 1933 Act (38 U.S.C. 715) (I R. 2-19). The counts are identical except as to the dates, amounts and the veterans named therein, and count 4, the first of those upon which petitioner stands convicted, is quoted here in pertinent part as typical of those counts (I R. 5-6):

> * * * defendant BARBARA KARRELL did knowingly cause to be made a false certificate and paper concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U.S.C. Sections 694, et seq.), in that defendant did cause the Bank of America, National Trust and Savings Association, 1358 Third Street, Santa Monica, California Branch to certify in a Home Loan Report presented to the United States Veterans Administration

> that the price paid by Philip Bentivegna, a veteran of World War II, for the purchase of a residential lot at 4907 Beloit Avenue, Los Angeles, California, as to which a loan guarantee was sought from the Government of the United States, was $1,550.00 and that the price paid by said veteran for such property did not exceed the reasonable value thereof of $1,650.00, as determined by proper appraisal dated July 24, 1946, made by Robert E. Gilliland, an appraiser designated by the Administrator of Veterans' Affairs; whereas, as defendant well knew and caused to be concealed from said bank and Veterans Administration, the total price demanded and received by the defendant from said veteran for such property was $2,-150.00 and did exceed the reasonable value thereof as determined by a proper appraisal.

Prior to trial, the court, on the Government's motion, dismissed counts 1, 3, 8, 10, 13, 15, 16, and 17 (II R. 3). Count 7 was dismissed at the close of the Government's case on a like motion (III R. 386). Petitioner's motion for judgment of acquittal as to the remaining counts, on the ground, *inter alia,* that they failed to state facts sufficient to constitute an offense against the United States (III R. 388), was denied at the close of the Government's case (III R. 431) and again at the close of all the evidence (IV R. 507-508, 519, 523). The jury found petitioner guilty on these counts (IV R. 631-632), but the court thereafter granted a judgment of acquittal as to counts 2 and 5 on the

ground that the certificates presented to the Veterans Administration in the transactions on which they were based showed on their face that the prices the veterans were paying for the lots exceeded the appraised value (IV R. 638-642, 647). The motion for judgment of acquittal was in other respects denied (IV R. 647), as were motions in arrest of judgment and for a new trial (IV R. 649).

The evidence showed that petitioner, after purchasing a large tract of land for the specific purpose of selling it to veterans for residential purposes under the Servicemen's Readjustment Act of 1944, sold lots to the veterans named in the indictment and as part of the transactions had them sign contracts with a building contractor, Culver City Housing, for the construction of houses on the lots (III R. 236-237, 454-455, 458). In the sales described in five of the six counts on which petitioner stands convicted, she accomplished the falsification of the actual selling price of the lots by first executing a deed to a third party, usually a friend or relative of the veteran-purchaser, for the price charged by her. The third party paid nothing for the land and immediately deeded it to the veteran, purportedly for a lower price, which was later reported to the Veterans Administration as the selling price. Actually, however, the veteran paid petitioner the higher price involved in the initial transaction. (III R. 238-250, 460-466.) The mortgagee, the Bank of America, was informed of the two transactions, but in its Home Loan Reports

to the Veterans Administration gave as the selling price the purported price involved in the conveyance from the third party to the veteran (II R. 36-39, 42-44, 47, 60-66, 72; III R. 325, 341-345). In the sale described in count 9 (I R. 10-11), only a deed from petitioner to the veteran was executed, but in the statement to the bank submitted and prepared by petitioner and signed by the veteran, a selling price of $1500.00 was given, and the bank reported to the Veterans Administration that $1500.00 was the selling price. The veteran, however, actually paid $1750.00. Petitioner testified that when she submitted the statement to the bank, she informed them that the selling price was $1750.00. (II R. 141-147, 156-157; IV R. 492-493.) In each instance the actual price exceeded the appraised value and in each instance the bank certified to the Veterans Administration that the price paid did not exceed such value (II R. 21-29).

Petitioner was sentenced to one year's imprisonment and fined $1,000 on each of counts 4, 6, 9, 11, 12, and 14, the imprisonment sentences to run concurrently. Execution of all the sentences was suspended, however, and petitioner was placed on probation for five years on conditions, to which she made no objection, *inter alia,* (1) that she make restitution in the total amount of $7,300 to the veterans named in the seventeen counts of this indictment and another veteran named in another indictment which was dismissed (IV R. 677), the amount of the restitution in each instance to be

the difference between the actual selling price of the land and the selling price as reported to the Veterans Administration, and (2) that she pay a fine of $2,700 to the United States (I R. 27-32). On appeal, the Court of Appeals sustained the conviction, but remanded the case to the trial court with instructions to amend the probation order by limiting the restitution to the veterans named in the six counts on which petitioner was finally convicted and limiting the amount of the restitution to the difference between the actual selling price and the value as appraised by Veterans Administration (V R. 692).

ARGUMENT

1. Petitioner contends that the act charged in each of the counts on which she was finally convicted and sentenced, i.e., knowingly causing a false certificate to be made to the Veterans Administration concerning a claim for benefits under the Servicemen's Readjustment Act of 1944, does not constitute a criminal offense under Section 1500 of that Act and Section 15 of the 1933 Act.[1] An identical contention, based on substantially the same arguments that Congress in enacting Section 1500 of the 1944 Act did not validly incorporate the penal provisions of Section 15 of the 1933 Act, that even if the penal provisions were validly in-

[1] Petitioner is mistaken in designating the earlier statute as the World War Veterans' Act of 1924 as amended (see pp. 4-5, *supra*).

corporated into the 1944 Act, they do not apply to the act of causing the making of a false certificate, and that if any penalty attaches to the commission of such an act, it applies only to veterans claiming benefits under the 1944 Act (Pet. 8-12), was urged here at the last term in *Young* v. *United States,* certiorari denied, 339 U. S. 913, reported below, 178 F. 2d 78 (C.A. 9). The Court is respectfully referred to our brief in opposition in that case (No. 565, O. T. 1949) for our answers to these arguments.

2. Petitioner contends (Pet. 17-19) that the condition of probation, as amended by the Court of Appeals, that she make restitution to the veterans involved in the counts on which she was finally convicted is invalid under the probation statute, 18 U.S.C. 3651, *supra,* pp. 5-6, because there was a "total absence" of evidence that the veterans suffered any actual damage or loss as a result of her offenses. The contention is frivolous. It completely ignores the fact that under the Servicemen's Readjustment Act of 1944 a veteran seeking a government guaranteed loan on residential property is entitled to the property at a reasonable value, as appraised by an appraiser designated by the Veterans Administration (Sec. 501(3), *supra,* pp. 3-4). Petitioner purchased the land for resale to veterans under the statute and having herself invoked its benefits in facilitating the sale of the land, she should not now be heard to argue that

the veteran was not entitled to its benefits. Cf. *United States* v. *Berger*, 145 F. 2d 888, 891 (C.A. 2), certiorari denied, 324 U.S. 848. Since the loss suffered by the veteran must be measured in accordance with the provisions of the statute, petitioner's argument that the reasonable value as determined by the appraiser was not necessarily the market value, either at the time of the sale or the time of sentence (Pet. 18), is irrelevant.

3. Petitioner does not contend that the evidence was insufficient to show that she knowingly caused the bank to make the false certificates to the Veterans Administration. She argues, however, that her conviction can not stand (1) because the bank was informed of the actual selling prices of the lots and there was therefore no concealment from it of the fact that those prices exceeded the prices reported to the Veterans Administration, and (2) because there was no proof that she knew the appraised valuations (Pet. 13-16). But concealment from the bank was in nowise an element of her offenses. As the trial court correctly instructed the jury, without objection by petitioner on this score (IV R. 616-617; see also p. 535), the offenses charged against her consisted of knowingly causing the false certificates to be made to the Veterans Administration. The culpability or innocence of the agency through which the falsification was accomplished does not affect her liability. *United*

States v. *Kenofskey,* 243 U.S. 440, 443; *United States* v. *Selph,* 82 F. Supp. 56 (S.D. Cal.).

Similarly, since the evidence is clear that petitioner caused the bank to certify that the prices at which she sold the lots to the veterans were less than the actual prices, it is immaterial that she did not know, as she testified, the reasonable valuations determined by the appraiser.

CONCLUSION

There is no conflict of decisions, and no questions are presented meriting further consideration by this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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